

Settlement Agreements & Boilerplate

Lisa Reel Schmidt
Assistant Attorney General
515-281-4055
lreelsr@ags.state.ia.us

Please note that the opinions expressed in this presentation are those of the speaker and may not represent the position of the Attorney General's office.

Settlement Agreement

It's a contract!

Consent Judgments

It's a contract!



Boilerplate

Typical General Provisions

- › Governing Law
- › Notice
- › Severability
- › Amendments
- › Merger (Integration)
- › Anti-Assignment
- › Anti-Delegation
- › Successors and Assigns
- › Counterparts
- › Waiver of Jury Trial
- › Approval of Consent Decree

Consent Decree

Approved

as to form and content.

Choice of Law – Governing Law

Choice of Law

◦ “The laws of Iowa govern all matters with respect to this Agreement, including torts.”



◦ “The laws of Iowa govern all matters arising under or relating to this Agreement.”



Notice: Drafting Considerations

- Notice should allocate risk of nonreceipt.
- Notice should designate methods of delivery.
- Generally, require notice to be in writing.
- Notice generally covers the entire agreement.

Severability

If any provision of this Agreement is invalid or illegal, the remaining provisions of the Agreement are not affected or impaired in any way.

If any provision of this Agreement is invalid or illegal, the remaining provisions of the Agreement remain in full force only if the essential provisions of the agreement for each party remain valid, binding and enforceable.



Amendments

The Parties may amend this Agreement only by the parties' written agreement that identifies itself as an amendment of this Agreement.

Merger or Integration Clauses

- Merger provision ensures that contract will not be altered or supplemented through parole evidence.
- Section 14.1. Merger. This Agreement constitutes the entire understanding between the parties.



Merger : Fully integrated Agreements

- › Defined: An agreement that is a “final” and “exclusive” expression of the parties agreement.
- › Parole evidence: Evidence of prior or contemporaneous agreements cannot be introduced to contradict or supplement a term.

Merger: Fully Integrated Agreements

- › To signal an agreement is a fully integrated agreement:
 - a) Describe agreement being signed as a “final” and “exclusive” agreement.
 - b) State that all prior negotiations and agreements are merged into the agreement being signed.

Merger : Partially Integrated Agreements

- › Defined : An agreement that is the “final” but not “exclusive” expression of the parties’ agreement.
- › Parole evidence: Evidence of prior or contemporaneous agreements cannot be used to contradict a term, but prior negotiations and agreements are admissible to supplement, but not contradict a writing.

Merger or Integration Clauses

- Section 14.1. Merger. This Agreement constitutes the final and exclusive agreement between the parties on the matters contained in this Agreement. All earlier and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement.

One-Pot Boilerplate

1. INTEGRATED AGREEMENT; SEVERABILITY. This Agreement constitutes the entire understanding between the parties. No other prior or contemporaneous subject matter hereof and not embodied in this Agreement shall be of any force or effect. This Agreement shall not be modified except in writing signed by the parties. If any provision of this Agreement shall for any reason be held to be invalid, unenforceable or contrary to the public policy, whether in whole or in part, the remaining provisions shall not be affected by such holding.

Assignment and Delegation

- General provisions must deal with both assignment and delegation.
- Assignment of rights: A transfer of rights.
- Delegation of performance.

Assignments: Drafting Considerations



"Joe shall not assign his rights under the Agreement and any purported assignment is void."

Assignments: Drafting Considerations



Section 12.1 Anti-Assignment. The parties shall not assign their rights under the Agreement and any purported assignment is void.

Section 12.2 Assignments by Operation of Law or Change of Control. An assignment by operation of law or a Change of Control is deemed an assignment for purposes of Section 12.1.

Delegations: Drafting Considerations



Section 13.1 Anti-Delegation. The parties shall not delegate their rights under the Agreement and any purported delegation is void.

Successor and Assigns




Primary Contract:
Tom Sells Cheese to Jerry.
Assignment and delegation
permitted.

Assignment Contract:

Tom assigns his right
to receive money to
Butch, but contract is
ambiguous.

Successor and Assigns

- › Without a successors and assigns clause in the Cheese Contract, a court would likely interpret the Assignment Contract as an assignment and delegation.
- › With a successors and assigns clause, it's a 
- › To avoid being interpreted as Assignment and Delegation Clause:

"This Agreement binds and benefits the parties and their respective *permitted* successors and assigns."

Even Better!

- › This Agreement binds and benefits
 - (a) Jerry's Corporation, Inc. and its permitted successors and assigns; and
 - (b) Tom and his heirs, executors, administrators, other legal representatives and permitted assigns.

Counterparts

- ▶ The parties may execute this Agreement in one or more counterparts, each of which is an original, and all of which constitute only one agreement between the parties.

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